

March 4, 1992

Mr. Raleigh Awaya
Acting Vice President for Administration
East-West Center
1777 East-West Road
Honolulu, Hawaii 96848

Dear Mr. Awaya:

Re: East-West Center

This is in response to your letter dated October 25, 1991, in which you stated that the Center for Cultural and Technical Interchange Between East and West, Inc. ("EWC"), is not governed by the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes ("UIPA").

ISSUE PRESENTED

Whether, under the UIPA, the EWC is an "agency" and, therefore, governed by the provisions of the UIPA.

BRIEF ANSWER

Act 82, 1975 Hawaii Session Laws, states that the EWC "shall not be considered a department, agency, or public instrumentality of the State, and shall not be subject to the laws of the State" applying to government agencies. Act 82, . 4, 1975 Haw. Sess. Laws 143, 145. Based upon the clear language of this Act, we believe that the EWC does not constitute an "agency" as this term is defined by section 92F-3, Hawaii Revised Statutes. Consequently, the EWC does not fall within the jurisdiction of the UIPA and need not comply with the UIPA's disclosure and public records report requirements.

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FACTS

In 1960, Congress enacted the "Center for Cultural and Technical Interchange Between East and West Act of 1960," Public Law No. 86-472, chapter VII ("East-West Center Act"), which instructed the Secretary of State to establish and operate the EWC "through arrangements with public, educational, or other nonprofit institutions." East-West Center Act, Pub. L. No. 86-472, . 703, 74 Stat. 141 (1960). From funds appropriated by Congress, the Secretary of State gave the University of Hawaii ("UH") a grant to administer the EWC. In turn, the UH provided land, facilities, and services to the EWC. See Act 82, . 2, 1975 Hawaii Session Laws 143, 144.

In 1975, the Legislature of the State of Hawaii enacted the East-West Center Corporation Act, establishing "an educational non-profit public corporation that would make arrangements with the secretary of state to administer and operate the East-West center." Id. By incorporating the EWC, the Legislature intended that the EWC "maintain its own autonomy" although the EWC would still be "dependent upon continued federal funding through grants-in-aid, the use in perpetuity of state lands, and the state's assumption of certain educational and institutional support costs." S. Conf. Comm. Rep. No. 29, 8th Leg., 1975 Reg. Sess., Haw. S.J. 868, 868-9 (1975), H. Conf. Comm. Rep. No. 29, Haw. H.J. 911, 912 (1975).

In the East-West Center Corporation Act, the State Legislature provided that the Governor of Hawaii and the Assistant U.S. Secretary of State would serve as ex officio, voting members of the EWC's Board of Governors ("Board"), and that each of them, in turn, would appoint five other members of the Board. However, the Legislature intended that "the Board of Governors should embody the concept of the [EWC] as an autonomous entity." Id. Therefore, the Legislature also provided for the election of five other Board members by those Board members who were appointed. In addition, the Legislature designated the UH President to be an ex officio, non-voting member of the Board. Act 82, . 7, 1975 Haw. Sess. Laws, 143, 148.

To further emphasize the EWC's autonomous status, the State Legislature declared, in Act 82, 1975 Hawaii Session Laws:

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The corporation shall not be considered a department, agency, or public instrumentality of the State, and shall not be subject to the laws of the State applying to departments, agencies and public instrumentalities of the State, except that the corporation shall be subject to all the laws of the State pertaining to non-profit corporations.

Act 82, . 4, 1975 Haw. Sess. Laws 143, 145 (emphasis added).

The Office of Information Practices ("OIP") sent to the OIP Contact Person at the UH various materials concerning the UIPA, including information about the public records report that the UIPA, in section 92F-18(b), Hawaii Revised Statutes, requires government agencies to complete. In turn, the OIP Contact Person at the UH distributed the information within the UH, and also to the EWC. You wrote to the OIP stating that based upon section 4 of Act 82, 1975 Hawaii Session Laws, you believe that the EWC is not governed by the provisions of the UIPA and, therefore, would not be required to complete the public records report required by the UIPA. Consequently, the OIP provides this opinion in response to your letter.

DISCUSSION

The UIPA sets forth the general rule that "[a]ll government records are open to public inspection unless access is restricted or closed by law." Haw. Rev. Stat. . 92F-11(a) (Supp. 1991). The term "government record" is defined by the UIPA as "information maintained by an agency in written, auditory, visual, electronic, or other physical form." Haw. Rev. Stat. . 92F-3 (Supp. 1991) (emphasis added). In addition, the UIPA requires each "agency" to "compile a public report describing the records it routinely uses or maintains using forms prescribed by the office of information practices." Haw. Rev. Stat. . 92F-18(b) (Supp. 1991). The UIPA broadly defines the term "agency" as follows:

[A]ny unit of government in this State, any county, or any combination of counties; department; institution; board; commission; district; council; bureau; office; governing authority; other instrumentality of state or county government; or corporation or other establishment owned, operated,

or managed by or on behalf of this State or any county, but does not include the nonadministrative functions of the courts of this State.

Haw. Rev. Stat. . 92F-3 (Supp. 1991) (emphases added).

According to the facts presented, the UH previously administered and operated the EWC, and currently provides property and support services to the EWC. For the most part, however, the EWC apparently operates as an autonomous entity which primarily relies upon federal funding. However, we need not assess the totality of circumstances in order to determine whether the EWC constitutes an "agency" for purposes of applying the UIPA. See OIP Op. Ltr. No. 90-31 (Oct. 25, 1990) (determination of whether the Hawaiian Human Society constitutes an "agency" under the UIPA). Act 82, 1975 Hawaii Session Laws, made clear that the EWC "shall not be considered a department, agency, or public instrumentality of the State, and shall not be subject to the laws of the State" applying to government agencies. Act 82, . 4, 1975 Haw. Sess. Laws 143, 145.

The UIPA's definition of the term "agency" is quite broad and includes certain corporations. Yet, based on the Legislature's express intent concerning the EWC's autonomous status set forth in Act 82, 1975 Hawaii Session Laws, we believe that the EWC does not constitute an "agency" as this term is defined by section 92F-3, Hawaii Revised Statutes. See S. Conf. Comm. Rep. No. 29, 8th Leg., 1975 Reg. Sess., Haw. S.J. 868 (1975), H. Conf. Comm. Rep. No. 29, Haw. H.J. 911 (1975). Consequently, the EWC does not fall within the jurisdiction of the UIPA. Therefore, in our opinion, the EWC is not required to comply with the UIPA's requirements imposed upon government agencies regarding the disclosure of their records and the filing of a public records report.

CONCLUSION

The EWC does not constitute an "agency" under the UIPA because Act 82, 1975 Hawaii Session Laws, states that the EWC shall "not be considered a department, agency, or public instrumentality of the State." Act 82, . 4, 1975 Haw. Sess. Laws 143, 145. Therefore, because the EWC is not an "agency" governed by the UIPA, the EWC is not required to comply with the UIPA's disclosure and records report requirements.

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If you have any further questions, please do not hesitate to contact me at 586-1403.

Very truly yours,

Lorna J. Loo
Staff Attorney

APPROVED:

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Director

LJL:sc

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